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LOK SABHA

The following Bills were introduced in Lok Sabha on the 21st September, 1964:—

BILL No. 65 OF 1964

*A Bill to confer on the President the power of the Legislature of the State of Kerala to make laws.*

Enacted by Parliament in the Fifteenth Year of the Republic of India as follows:—

1. This Act may be called the Kerala State Legislature (Delegation of Powers) Act, 1964. Short title.

2. In this Act, "Proclamation" means the Proclamation issued on the 10th day of September, 1964, by the President under clause (1) of article 356 of the Constitution. Definition.

3. (1) The power of the Legislature of the State of Kerala to make laws, which has been declared by the Proclamation to be exercisable by or under the authority of Parliament, is hereby conferred on the President. Conferment on the President of the power

(2) In the exercise of the said power, the President may, from time to time, whether Parliament is or is not in session, enact as a President's Act a Bill containing such provisions as he considers necessary: of the State Legislature to make laws.

Provided that before enacting any such Act, the President shall, whenever he considers it practicable to do so, consult a committee constituted for the purpose consisting of all the members of the House of the People and the Council of States who for the time being fill the seats allotted to the State of Kerala in the two Houses

(3) Every Act enacted by the President under sub-section (2) shall, as soon as may be after enactment, be laid before each House of Parliament.

(4) Either House of Parliament may, by resolution passed within seven days from the date on which the Act has been laid before it under sub-section (3), direct any modifications to be made in the Act, and, if the modifications are agreed to by the other House of Parliament during the session in which the Act has been so laid before it or the session succeeding, such modifications shall be given effect to by the President by enacting an amending Act under sub-section (2):

Provided that nothing in this sub-section shall affect the validity of the Act or of any action taken thereunder before it is so amended.

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## STATEMENT OF OBJECTS AND REASONS

Under the Proclamation of the President, dated the 10th September, 1964, the powers of the Legislature of the Kerala State are now exercisable by or under the authority of Parliament. Such legislative measures as may be necessary for the State can be taken up by Parliament only by postponing its business; and even then, it is likely that Parliament may not have time to deal with all legislative measures for the State. It is, therefore, proposed that Parliament should, in accordance with the provisions of sub-clause (a) of clause (1) of article 357 of the Constitution, confer by law on the President the powers of the Legislature of the State of Kerala to make laws for the State. The present Bill is intended to give effect to this proposal.

NEW DELHI;

GULZARILAL NANDA.

*The 17th September, 1964.*

## BILL NO. 64 OF 1964

*A Bill further to amend the Companies Act, 1956.*

BE it enacted by Parliament in the Fifteenth Year of the Republic of India as follows:—

Short title  
and com-  
mence-  
ment.

1. (1) This Act may be called the Companies (Second Amend-  
ment) Act, 1964.

(2) It shall come into force on such date as the Central Govern-  
ment may, by notification in the Official Gazette, appoint and differ-  
ent dates may be appointed for different provisions of this Act. 5

Amend-  
ment of  
section 1.

2. In section 1 of the Companies Act, 1956 (hereinafter referred  
to as the principal Act), in sub-section (3), the following further  
proviso shall be inserted at the end, namely:— 1 of 1956, 10

“Provided further that it shall apply to the State of Naga-  
land subject to such modifications, if any, as the Central Gov-  
ernment may, by notification in the Official Gazette, specify.”

Amend-  
ment of  
section 2.

3. In section 2 of the principal Act,—

(i) in clause (8), after the word “deeds,” the word “vouch- 15  
ers,” shall be inserted;

(ii) in clause (30), after the words “manager or secretary”,  
the words “or any person in accordance with whose directions or  
instructions the Board of directors or any one or more of the  
directors is or are accustomed to act,” shall be inserted. 20

4. In section 10E of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

Amend-  
ment of  
section  
10E.

“(4A). The Board, with the previous approval of the Central Government, may, by order in writing, authorize the chairman or any of its other members or its principal officer (whether known as secretary or by any other name) to exercise and discharge, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions as it may think fit; and every order made or act done in the exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.”.

5. In section 13 of the principal Act, in sub-section (1),—

Amend-  
ment of  
section 13.

(i) in clause (b), the word “and” shall be omitted;

(ii) for clause (c), the following clauses shall be substituted, namely:—

“(c) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects;

(d) the other objects of the company not included in clause (c); and

(e) in the case of companies (other than trading corporations), with objects not confined to one State, the States to whose territories the objects extend.”.

6. To section 21 of the principal Act, the following proviso shall be added, namely:—

Amend-  
ment of  
section 21.

“Provided that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word “Private”, consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or a private company into a public company.”.

7. In section 43A of the principal Act, in sub-section (6), after clause (a), the following clause shall be inserted, namely:—

Amend-  
ment of  
section  
43A.

“(aa) to a private company in which shares are held by one or more bodies corporate incorporated outside India, which or each of which, if incorporated in India, would be a private company within the meaning of this Act, if the Central Government, on an application made to it in this behalf by that private company, by order so directs; or”.

Insertion  
of new  
section  
68A.

8. After section 68 of the principal Act, under the sub-heading "*Prospectus*", the following section shall be inserted, namely:—

"Person-  
ation for  
acquisi-  
tion,  
etc., of  
shares.

"68A. (1) Any person who—

(a) makes in a fictitious name an application to a company for acquiring, or subscribing for, any shares therein, 5  
or

(b) otherwise induces a company to allot, or register any transfer of, shares therein to him, or any other person in a fictitious name,

shall be punishable with imprisonment for a term which may 10  
extend to five years.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by the company and in every form of application for shares which is issued by the company to any person." 15

Amend-  
ment of  
section 69.

9. In section 69 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank—

(a) until the certificate to commence business is obtain- 20  
ed under section 149, or

(b) where such certificate has already been obtained, until the entire amount of the minimum subscription has been received by the company,

and where the entire amount of the minimum subscription has 25  
not been received by the company within the time on the expiry of which the moneys received from the applicants for shares are required to be repaid without interest under sub-section (5), all moneys received from applicants for shares shall be returned in accordance with the provisions of that sub-section." 30

Amend-  
ment of  
section 73.

10. In section 73 of the principal Act, in sub-section (5), for the words "permission shall not be deemed to be refused", the words "it shall not be deemed that permission has not been granted" shall be substituted.

11. In section 75 of the principal Act,—

Amend-  
ment of  
section 75.

(a) to clause (a) of sub-section (1), the following proviso shall be added, namely:—

5 “Provided that the company shall not show in such re-  
turn any shares as having been allotted for cash if cash has  
not actually been received in respect of such allotment and  
only book adjustment has been made without cash having  
passed.”;

10 (b) in sub-section (3), for the words “is inadequate, he may  
extend that period as he thinks fit”, the following words shall be  
substituted, namely:—

“is or was inadequate, he may, on application made in that  
behalf by the company, whether before or after the expiry  
of the said period, extend that period as he thinks fit”;

15 (c) in sub-section (4), for the proviso, the following proviso  
shall be substituted, namely:—

20 “Provided that in case of contravention of the proviso to  
clause (a) of sub-section (1), every such officer, and every  
promoter of the company who is guilty of the contravention  
shall be punishable with fine which may extend to five  
thousand rupees.”.

12. In section 76 of the principal Act,—

Amend-  
ment of  
section 76.

(a) in sub-section (1)—

25 (i) in clause (iii), the word “and” occurring at the  
end shall be omitted;

(ii) in clause (iv), the word “and” shall be inserted  
at the end; and

(iii) after clause (v), the following clause shall be  
inserted, namely:—

30 “(v) a copy of the contract for the payment of the  
commission is delivered to the Registrar at the time  
of delivery of the prospectus or the statement in lieu  
of prospectus for registration.”;

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) For the removal of doubts it is hereby declared that no commission shall be paid under clause (a) of sub-section (1) to any person on shares or debentures which are not offered to the public for subscription.” 5

Amend- 13. In section 108 of the principal Act, after sub-section (1),  
ment of the following sub-section shall be inserted, namely:—  
section 108.

“(1A) Every instrument of transfer—

(a) shall be in the prescribed form obtainable from 10  
the prescribed authority who shall stamp or otherwise en-  
dorse thereon the date on which it is issued, and

(b) shall be delivered to the company,—

(i) in the case of shares dealt in or quoted on a 15  
recognised stock exchange within six months from such  
date,

(ii) in any other case, within two months from that  
date.”.

Amend- 14. In section 111 of the principal Act, except in sub-section  
ment of (4A), for the words “the Central Government” or the words “that 2  
section Government”, wherever they occur, the words “the Tribunal” shall  
111. be substituted.

Amend- 15. In section 149 of the principal Act,—  
ment of

(a) after sub-section (2), the following sub-section shall  
be inserted, namely:— 25

“(2A) Without prejudice to the provisions of sub-  
section (1) and sub-section (2), a company (whether it is a  
public company or a private company) having a share capi-  
tal, whether or not it has issued a prospectus inviting the  
public to subscribe for its shares shall not at any time com- 30  
mence any business in relation to the objects specified in  
clause (c) or clause (d) of sub-section (1) of section 13,  
unless—

(a) the company has approved of the commence-  
ment of any such business by a special resolution passed 35  
in that behalf by it in general meeting; and

(b) there has been filed with the Registrar a  
duly verified declaration by one of the directors or



the secretary, in the prescribed form, that clause (a) has been complied with;

5 and if the company commences any such business in contravention of this sub-section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues."

10 (b) in sub-section (7), for the word "Nothing", the words, brackets, figure and letter "Save as otherwise provided in sub-section (2A), nothing" shall be substituted.

16. In section 153B of the principal Act, in sub-section (4),— Amend-

(i) in clause (b), for the words "where the trust money invested in shares in, or debentures of, a company", the words ment of section 153B..  
15 "where the value of the shares in, or debentures of, a company, held in trust" shall be substituted;

(ii) the following *Explanation* shall be inserted at the end, namely:—

20 '*Explanation.*—The expression "the value of the shares in, or debentures of, a company" in clause (b) means,—

(i) in the case of shares or debentures acquired by way of allotment or transfer for consideration, the cost of acquisition thereof, and

25 (ii) in any other case, the paid-up value of the shares.'

17. In section 159 of the principal Act, in sub-section (1),— Amend-

(a) in clause (f), the word "and" occurring at the end ment of section 159.  
shall be omitted;

30 (b) in clause (g), the word "and" shall be inserted at the end;

(c) after clause (g), the following clause shall be inserted, namely:—

"(h) every person referred to in clause (b) of sub-section (1) of section 307."

18. In section 163 of the principal Act, in sub-section (1), in the proviso, in clause (i), the word "and" shall be inserted at the end Amend-  
and clause (ii) shall be omitted. ment of section 163.

Amend-  
ment of  
section  
174.

19. In section 174 of the principal Act, in sub-section (1), for the words "public company, and two members personally present in the case of a private company," the words, brackets, figures and letter "public company (other than a public company which has become such by virtue of section 43A), and two members personally present in the case of any other company," shall be substituted. 5

Amend-  
ment of  
section  
203.

20. In section 203 of the principal Act, in sub-section (6), the words, brackets and figures ' and for the purposes of the said sub-clause (ii), the expression "officer" shall include any person in accordance with whose directions or instructions the Board of 10 directors of the company has been accustomed to act' shall be omitted.

Amend-  
ment of  
section  
209.

21. In section 209 of the principal Act,—

(a) in sub-section (1)—

(i) in clause (b), the word "and" occurring at the end 15 shall be omitted;

(ii) in clause (c), the word "and" shall be inserted at the end;

(iii) after clause (c), the following clause shall be inserted, namely:— 20

"(d) in the case of a company engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour as may be prescribed, if such company is required by the Central Government to include such 25 particulars in the books of account;"

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) (a) The books of account and other books and papers shall be open to inspection by any director during 30 business hours.

(b) The books of account and other books and papers shall be open to inspection during business hours—

(i) by the Registrar,

(ii) by any officer of Government authorised by the Central Government in this behalf:

Provided that no such inspection shall be made by the Registrar or such officer unless he is of opinion that sufficient cause exists for such inspection:

Provided further that such inspection may be made without giving any previous notice to the company or any officer thereof.

(c) The Registrar or such officer may during the course of inspection—

(i) make or cause to be made copies of the books of account and other books and papers,

(ii) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(d) In order to enable the Registrar or such officer to make an inspection of the books of account and other books and papers of the company, it shall be the duty of the company—

(i) to produce to the Registrar or such officer such books of account and other books and papers of the company as the Registrar or such officer may require,

(ii) otherwise to give to the Registrar or such officer all assistance in connection with the inspection which the company is reasonably able to give.”;

(c) in sub-section (6),—

(i) in clause (a), the following shall be inserted at the end, namely:—

“and all officers and other employees and agents [as defined in sub-section (6) of section 240] of such managing agent or secretaries and treasurers”;

(ii) in clause (c), the word “and” occurring at the end shall be omitted;

(iii) in clause (d), the word “and” shall be inserted at the end;

(iv) after clause (d), the following clause shall be inserted, namely:—

“(e) whether or not a company has a managing agent or secretaries and treasurers, every officer and other employee and agent (defined as aforesaid) of the company.”.

Amendment of section 227.

22. In section 227 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Without prejudice to the provisions of sub-section (1), the auditor shall inquire—

(a) whether loans and advances made by the company have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members;

(b) whether transactions of the company which are represented merely by book entries conform to normal business practices accepted by established principles of accountancy;

(c) where the company is not an investment company within the meaning of section 372, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(d) whether loans and advances made to individuals and private concerns have been shown as deposits;

(e) whether personal expenses have been charged to revenue account;

(f) where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance-sheet is correct, regular and not misleading.”;

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) The Central Government may, by general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the”

auditor's report shall also include a statement on such matters as may be specified therein."

23. In section 228 of the principal Act, in sub-section (4), for the words "may, by rules made in this behalf, exempt", the words "may make rules providing for the exemption of" shall be substituted.

Amendment of section 228.

24. After section 233A of the principal Act, under the sub-heading "Audit", the following section shall be inserted, namely:—

Insertion of new section 233B.

10 "233B. (1) Where in the opinion of the Central Government it is necessary so to do for the purpose of obtaining a true and fair view of the state of affairs of any company engaged in production, processing, manufacturing or mining activities, the Central Government may, by general or special order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor who shall be either a cost accountant within the meaning of the Cost and Works Accountants Act, 1959, or such other person possessing the prescribed qualifications.

Audit of cost accounts in certain cases.

23 of 1959.

20 (2) An auditor under this section shall be appointed by the company in general meeting and the provisions of section 224 shall apply, as far as may be, in relation to such auditor as they apply in relation to an auditor appointed under that section.

(3) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 224.

25 (4) The provisions of section 227 and sections 229 to 233 shall, as far as may be, apply in relation to an audit under this section.

30 (5) The auditor shall make his report in such form as may be prescribed and the provisions of sections 216 and 219 shall apply in relation to such report as they apply in relation to a report made by an auditor appointed under section 224.

(6) A copy of the auditor's report under this section shall be filed with the Registrar within thirty days from the date of the signing of the report."

35 25. In section 234A of the principal Act,—

Amendment of section 234A.

(a) in sub-section (1), after the words "make an application", the words "to the Tribunal or" shall be inserted;

40 (b) in sub-section (2), for the word "Magistrate", the words "Tribunal or Magistrate, as the case may be," shall be substituted;

(c) in sub-section (3),—

(i) for the word “Magistrate”, the words “Tribunal or Magistrate, as the case may be,” shall be substituted;

(ii) in the proviso, after the words “extracts from them”, the words “or place identification marks on them or any part thereof” shall be inserted;

(d) in sub-section (4), after the word “search” and the word “searches”, the words “or seizure” and the words “or seizures” shall respectively be inserted.

Amend-  
ment of  
section  
240.

26. In section 240 of the principal Act,—

10

(a) in clause (a) of sub-section (1), for the words “to produce to an inspector”, the words “to preserve and to produce to an inspector or any person authorised by him in this behalf,” shall be substituted;

(b) after sub-section (1), the following sub-sections shall be inserted, namely :—

15

“(1A) The inspector may, with the previous approval of the Central Government, require any body corporate, firm or individual [other than those referred to in sub-section (1)] to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

25

(1B) The inspector may keep in his custody any books and papers produced under sub-section (1) or (1A) for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers are produced:

Provided that if certified copies of the books and papers produced under sub-section (1A) are furnished to the inspector, he shall return those books and papers to the body corporate, firm or individual concerned.”;

(c) for sub-sections (2), (3), (3A) and (4), the following sub-sections shall be substituted, namely :—

35

“(2) An inspector may examine on oath—

(a) any of the persons referred to in sub-section (1); and

40

(b) with the previous approval of the Central Government, any other person,

5 in relation to the affairs of the company, other body corporate, managing agent, secretaries and treasurers or associate, as the case may be; and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(3) If any person fails without reasonable cause or refuses—

10 (a) to produce to an inspector or any person authorised by him in this behalf any book or paper which it is his duty under sub-section (1) or sub-section (1A) to produce; or

15 (b) to furnish any information which it is his duty under sub-section (1A) to furnish; or

(c) to appear before the inspector personally when required to do so under sub-section (2) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or

20 (d) to sign the notes of any examination referred to in sub-section (5),

25 he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both, and also with a further fine which may extend to two hundred rupees for every day after the first during which the failure or refusal continues.”;

(d) in sub-section (5), the word, brackets and figure “or (4)” shall be omitted.

30 27. In section 240A of the principal Act,—

Amendment of section 240A.

(a) in sub-section (1), after the words “make an application”, the words “to the Tribunal or” shall be inserted;

35 (b) in sub-section (2), for the word “Magistrate”, the words “Tribunal or Magistrate, as the case may be,” shall be substituted;

(c) in sub-section (3)—

(i) for the word “Magistrate”, the words “Tribunal or Magistrate, as the case may be,” shall be substituted;

(ii) the following proviso shall be inserted at the end, namely :—

“Provided that the inspector may, before returning such books and papers as aforesaid, place identification marks on them or any part thereof.”;

(d) in sub-section (4), after the word “search” and the word “searches”, the words “or seizure” and the words “or seizures” shall respectively be inserted.

Amend-  
ment of  
section  
241.

28. In section 241 of the principal Act, in clause (a) of sub-section (2), after the word “any report”, the brackets and words “(other than an interim report)” shall be inserted.

Insertion  
of new  
section  
250A.

29. After section 250 of the principal Act, the following section shall be inserted, namely :—

Voluntary  
winding  
up of  
company,  
etc., not to  
stop inves-  
tigation  
proceed-  
ings.

“250A. An investigation may be initiated under section 235, 237, 239, 247, 248 or 249 notwithstanding that—

(a) an application has been made for an order under section 397 or section 398; or

(b) the company has passed a special resolution for voluntary winding up,

and no investigation so initiated shall be stopped or suspended by reason only of the fact that an application referred to in clause (a) has been made or a special resolution referred to in clause (b) has been passed.”.

Amend-  
ment of  
section  
252.

30. In section 252 of the principal Act,—

(i) in sub-section (1), for the words “public company”, the words, brackets, figures and letter “public company (other than a public company which has become such by virtue of section 43A)” shall be substituted;

(ii) in sub-section (2), for the word “private”, the word “other” shall be substituted;

Amend-  
ment of  
section  
259.

31. To section 259 of the principal Act, the following proviso shall be added, namely :—

“Provided that where such permissible maximum is twelve or less than twelve, no approval of the Central Government shall be required if the increase in the number of its directors does not make the total number of its directors more than twelve.”.



32. In section 264 of the principal Act—

Amend-  
ment of  
section  
264.

(i) in sub-section (1), for the words "other than a person", the words "other than a director retiring by rotation or otherwise or a person" shall be substituted;

5 (ii) for sub-section (2), the following sub-section shall be substituted, namely :—

"(2) A person other than—

10 (a) a director re-appointed after retirement by rotation or immediately on the expiry of his term of office,  
or

(b) an additional or alternate director, or a person filling a casual vacancy in the office of a director under section 262, appointed as a director or re-appointed as an additional or alternate director, immediately on the  
15 expiry of his terms of office, or

(c) a person named as a director of the company under its articles as first registered,

shall not act as a director of the company unless he has within thirty days of his appointment signed and filed with  
20 the Registrar his consent in writing to act as such director."

33. In section 266 of the principal Act, sub-section (4) shall be omitted.

Amend-  
ment of  
section  
266.

34. Section 271 of the principal Act shall be omitted.

Omission  
of section  
271.

35. In section 273 of the principal Act, for the word and figures "to 272", the word and figures "and 272" shall be substituted.

25

Amend-  
ment of  
section  
273.

36. In section 280 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely :—

Amend-  
ment of  
section  
280.

30 "(1) Save as otherwise provided in this section, a person shall not be capable of being appointed, or shall not act as, a director of a company if he has attained the age of seventy-five years,

(2) A director of a company shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of seventy-five years;

Provided that a director who has attained the age of seventy-five years before the commencement of the Companies (Second Amendment) Act, 1964 and is in office at such commencement shall vacate his office at the conclusion of the first annual general meeting held after such commencement.”

5

Omission  
of section  
281.

37. Section 281 of the principal Act shall be omitted.

Amend-  
ment of  
section  
282.

38. In section 282 of the principal Act, for the words “sixty-five years”, the words “seventy-five years” shall be substituted.

Amend-  
ment of  
section 285.

39. In section 285 of the principal Act, for the words beginning with “three calendar months” and ending with “and the date of the next meeting”, the words “three months and at least four such meetings shall be held in every year” shall be substituted.

Insertion  
of new  
section  
294A.

40. After section 294 of the principal Act, the following section shall be inserted, namely :—

Prohibi-  
tion of  
payment  
of com-  
pensation  
to sole  
selling  
agents  
for loss of  
office in  
certain  
cases.

“294A. (1) A company shall not pay or be liable to pay to its sole selling agent any compensation for the loss of his office in the following cases :—

15

(a) where the appointment of the sole selling agent ceases to be valid by virtue of sub-section (2A) of section 294;

20

(b) where the sole selling agent resigns his office in view of the reconstruction of the company or of its amalgamation with any other body corporate or bodies corporate and is appointed as the sole selling agent of the reconstructed company or of the body corporate resulting from the amal- gamation;

25

(c) where the sole selling agent resigns his office, other- wise than on the reconstruction of the company or its amal- gamation as aforesaid;

(d) where the sole selling agent has been guilty of fraud or breach of trust in relation to, or of gross negli- gence in, the conduct of his duty as the sole selling agent;

30

(e) where the sole selling agent has instigated, or has taken part directly or indirectly in bringing about, the ter- mination of the sole selling agency.

35

(2) The compensation which may be paid by a company to its sole selling agent for loss of office shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term, or for three years,

5 whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which his office ceased or was terminated, or where he held his office for a lesser period than three years, during such period.”.

41. In section 303 of the principal Act, in sub-section (2), the words “or in any of the particulars contained in the register” and the proviso shall be omitted. Amendment of section 303.

42. In section 307 of the principal Act, for sub-section (11), the following sub-section shall be substituted, namely:— Amendment of section 307.

“(11) The provisions of this section and section 308 shall apply to, and in relation to,—

(a) every managing agent, secretaries and treasurers or manager of a company; and

15 (b) every person (other than a director) where five per cent. or more of the equity share capital of a public company is held by him or in trust for him or of which he has any right to become the holder whether on payment or not,

as they apply to, and in relation to, directors.”.

20 43. In section 309 of the principal Act—

(i) in sub-section (1), the following shall be added at the end, namely:— Amendment of section 309.

25 “and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if—

30 (a) the services rendered are of a professional nature, and

(b) in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession and such practice is his principal occupation”;

35

(ii) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) A director who is neither in the whole-time employment of the company nor a managing director may be paid remuneration—

5

either

(a) by way of a monthly payment with the approval of the Central Government;

or

(b) by way of commission if the company by special resolution authorises such payment:

10

Provided that the remuneration paid to such director, or where there is more than one such director, to all of them together, shall not exceed—

(i) one per cent. of the net profits of the company, if the company has a managing or whole-time director, a managing agent or secretaries and treasurers or a manager;

15

(ii) three per cent. of the net profits of the company, in any other case:

20

Provided further that the company in general meeting may, with the approval of the Central Government, authorise the payment of such remuneration at a rate exceeding one per cent. or, as the case may be, three per cent. of its net profits.”

25

Amend-  
ment of  
section  
310.

44. To section 310 of the principal Act, the following proviso shall be added, namely:—

“Provided that the approval of the Central Government shall not be required where any such provision or any amendment thereof purports to increase, or has the effect of increasing, the amount of such remuneration only by way of a fee for each meeting of the Board or a committee thereof attended by any such director and the amount of such fee after such increase does not exceed one hundred rupees.”

30

Amend-  
ment of  
section  
314.

45. In section 314 of the principal Act,—

35

(a) in sub-section (1)—

(i) for the words “previous consent”, the word “consent” shall be substituted;

(ii) for the proviso, the following proviso shall be substituted, namely:—

5 “Provided that it shall be sufficient if the special resolution according the consent of the company is passed at the general meeting of the company held for the first time after the holding of such office or place of profit:

10 Provided further that where a relative of a director or a firm in which such relative is a partner, is appointed to an office or place of profit under the company or a subsidiary thereof without the knowledge of the director, the consent of the company may be obtained either in the general meeting aforesaid or within three months from the date of the appointment, whichever is later.”;

15 (b) for sub-section (2), the following sub-section shall be substituted, namely:—

20 “(2) If any office or place of profit is held in contravention of the provisions of sub-section (1), the director, partner, relative, firm, private company, managing agent, secretaries and treasurers or the manager, concerned, shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in the first proviso or, as the case may be, the date of the expiry of the period of three months referred to in the second proviso to that sub-section, and shall also be

25 liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.”.

30 46. In section 370 of the principal Act,—

(a) in sub-section (1)—

(i) the words “which is under the same management as the lending company” shall be omitted;

35 (ii) the following proviso shall be added at the end, namely:—

“Provided that the aggregate of the loans so made to all bodies corporate shall not exceed without the prior approval of the Central Government—

40 (a) thirty per cent. of the aggregate of the subscribed capital of the lending company and its

Amend-  
ment of  
section  
370.

free reserves where all such other bodies corporate are not under the same management as the lending company;

(b) twenty per cent. of the aggregate of the subscribed capital of the lending company and its free reserves where all such other bodies corporate are under the same management as the lending company.”; 5

(b) in sub-section (1C), in clause (b), after the words “provided by the lending company”, the words “in relation to any such body corporate” shall be inserted; 10

(c) in sub-section (1D), for the words “every such loan, guarantee or security”, the words, brackets, figure and letter “every loan, guarantee or security referred to in sub-section (1C)” shall be substituted. 15

**Amendment of section 372.**

47. In section 372 of the principal Act, in sub-section (13), after the word, brackets and figure “sub-section (2)”, the words, brackets and figure “and sub-section (5)” shall be inserted.

**Amendment of section 391.**

48. In section 391 of the principal Act, to sub-section (2), the following proviso shall be added, namely:— 20

“Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor’s report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.”. 25

**Amendment of section 394.**

49. In section 394 of the principal Act, to sub-section (1), the following provisos shall be added, namely:— 30

“Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Court unless the Court has received a report from the Company Law Board 35

or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest:

5 Provided further that no order for the dissolution of any transferor company under clause (iv) shall be made by the Court unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest."

10 50. After section 394 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 394A.

15 "394A. The Court shall give notice of every application made to it under section 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections."

Notice to be given to Central Government for applications under sections 391 and 394.

51. In section 395 of the principal Act,—

Amendment of section 395

20 (a) in sub-section (3), for the words "the transferor company shall thereupon register the transferee company as the holder of those shares:", the following shall be substituted, namely:—

"the transferor company shall—

(a) thereupon register the transferee company as the holder of those shares, and

25 (b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company:";

30 (b) after sub-section (4), the following sub-section shall be inserted, namely:—

55 "(4A) (a) The following provisions shall apply in relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company, namely:—

(i) every such offer or every circular containing such offer or every recommendation to the members of the transferor company by its directors to accept such



offer shall be accompanied by such information as may be prescribed;

(ii) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; 5

(iii) every circular containing, or recommending acceptance of, such offer shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered; 10

(iv) the Registrar may refuse to register any such circular which does not contain the information required to be given under sub-clause (i) or which sets out such information in a manner likely to give a false impression; and 15

(v) an appeal shall lie to the Court against an order of the Registrar refusing to register any such circular.

(b) Whoever issues a circular referred to in sub-clause (iii) of clause (a), which has not been registered, shall be punishable with fine which may extend to five hundred rupees." 20

Insertion  
of new  
section  
396A.

52. In the principal Act, in Chapter V of Part VI, after section 396, the following section shall be inserted, namely:—

Preserva-  
tion of  
books and  
papers of  
amalgamated  
company.

"396A. The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the first mentioned company or its amalgamation or the acquisition of its shares." 25 30 35

Amend-  
ment of  
Chapter  
VII of  
Part VI,

53. In the principal Act, in Chapter VII of Part VI,—

(a) in the heading, for the words "ADVISORY COMMISSION", the words "ADVISORY COMMITTEE" shall be substituted;



(b) for sections 410, 411, 412, 413, 414 and 415, the following section shall be substituted, namely:—

5                   “410. For the purpose of advising the Central Govern-  
ment and the Company Law Board on such matters arising  
out of the administration of this Act as may be referred to  
it by that Government or Board, the Central Government  
may constitute an Advisory Committee consisting of not  
more than five persons with suitable qualifications.”

Appoint-  
ment of  
Advisory  
Committee.

10           54. In section 497 of the principal Act, in sub-section (5), for the  
words “Provided that”, the following shall be substituted, namely:—

Amend-  
ment of  
section  
497.

15                   “Provided that the company shall not be deemed to be dis-  
solved until the Official Liquidator has, on scrutiny of the books  
and papers of the company, made a report to the Court that the  
affairs of the company have not been conducted in a manner pre-  
judicial to the interests of its members or to public interest:

Provided further that”.

55. In section 509 of the principal Act, in sub-section (5), for the  
words “Provided that”, the following shall be substituted, namely:—

Amend-  
ment of  
section  
509.

20                   “Provided that the company shall not be deemed to be dis-  
solved until the Official Liquidator has, on scrutiny of the books  
and papers of the company, made a report to the Court that the  
affairs of the company have not been conducted in a manner  
prejudicial to the interests of its members or to public interest:

Provided further that”.

25           56. After section 511 of the principal Act, the following section  
shall be inserted, namely:—

Insertion  
of new  
section  
511A.

“511A. The provisions of section 454 shall, so far as may be,  
apply to every voluntary winding up as they apply to the wind-  
ing up by the Court except that references to—

30                   (a) the Court shall be omitted;

(b) the Official Liquidator or the provisional liquida-  
tor shall be construed as references to the liquidator; and

(c) the “relevant date” shall be construed as references  
to the date of commencement of the winding up.”.

Applica-  
tion of  
section 454  
to volun-  
tary wind-  
ing up.

Amend-  
ment of  
section  
593.

57. In section 593 of the principal Act, in clause (c), the words "or the particulars contained in the list of the directors and secretary" shall be omitted.

Substitu-  
tion of  
new sec-  
tions for  
section  
635A.

58. For section 635A of the principal Act, the following sections shall be substituted, namely:—

5

Protection  
of acts  
done in  
good faith

"635A. No suit, prosecution or other legal proceeding shall lie against the Government or any officer of Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer of any report, paper or proceedings.

10

Non-dis-  
closure of  
informa-  
tion in  
certain  
cases.

635AA. Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of Government or any other person shall not be compelled to disclose to any court, tribunal or other authority whence he got any information which—

15

(a) has led the Central Government to direct a special audit under section 233A or to order an investigation under section 235, 237, 247, 248 or 249; or

20

(b) is or has been material or relevant in connection with such special audit or investigation."

Insertion  
of new  
section  
637B.

59. After section 637A of the principal Act, under the sub-heading "*Grant of approval, etc., subject to conditions and levy of fees on applications*", the following section shall be inserted, namely:—

25

Condonation  
of  
delays in  
certain  
cases.

"637B. Notwithstanding anything contained in this Act,—

(a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay;

30

(b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay."

35

60. After section 640A of the principal Act, under the sub-heading "*Schedules, Forms and Rules*", the following section shall be inserted, namely:—

Insertion of new section 640B.

5 "640B. (1) Every application made to the Central Government under section 259, 268, 269, 310, 311, 326, 328, 329, 332, 343, 345, 346, 352, 408, or 409 shall be in such form as may be prescribed.

Forms of, and procedure in relation to, certain applications.

10 (2) (a) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

15 (b) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

20 (c) Copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

(d) Nothing in clause (a), (b) or (c) shall apply to a private company which is not the managing agent of a public company."

25 61. In Schedule IA of the principal Act, serials 23 to 49 (both inclusive) shall be omitted.

Amendment of Schedule IA.

62. The amendments directed in the Schedule, being amendments relating to matters of minor detail or of a clarificatory or consequential nature, shall be made in the sections of the principal Act specified therein.

Minor amendments.

## THE SCHEDULE

(See section 62)

## MINOR AMENDMENTS IN THE COMPANIES ACT, 1956

*Section 2.*—In clause (49A), for “Tribunal constituted”, substitute  
“Companies Tribunal constituted”. 5

*Section 10A.*—In sub-section (1), for “constitute a Tribunal”,  
substitute “constitute a Tribunal to be known as the Companies  
Tribunal”.

*Section 44.*—In clause (b) of sub-section (1), for “fourteen”,  
substitute “thirty”. 10

*Section 75.*—For “one month”, in all places, substitute “thirty  
days”.

*Section 95.*—In sub-section (1), for “one month”, substitute  
“thirty days”.

*Section 97.*—In sub-section (1), for “fifteen”, substitute “thirty”. 15

*Section 107.*—In sub-section (5), for “fifteen”, substitute “thirty”.

*Section 125.*—For “twenty-one”, in all places, substitute “thirty”.

*Section 127.*—In sub-section (1), for “twenty-one”, in all places,  
substitute “thirty”.

*Section 128.*—For “twenty-one”, substitute “thirty”. 20

*Section 137.*—In sub-section (1), for “fifteen”, substitute “thirty”.

*Section 138.*—In sub-section (1), for “twenty-one”, substitute  
“thirty”.

*Section 146.*—For “twenty-eighth” and “twenty-eight”, substitute  
respectively “thirtieth” and “thirty”. 25

*Section 156.*—For “Court” and “fourteen”, in all places, substitute  
respectively “Tribunal” and “thirty”.

*Section 157.*—In sub-section (2), for “one month”, in both places,  
substitute “thirty days”.

*Section 159.*—In sub-section (1), for “forty-two”, substitute 30  
“sixty”.

*Section 160.*—In sub-section (1), for “forty-two”, substitute “sixty”.

*Section 192.*—In sub-section (1), for “fifteen”, substitute “thirty”.

*Section 193.*—For “fourteen”, in all places, substitute “thirty”.

5     *Section 220.*—In sub-section (1), for “at the same time as the copy of the annual return referred to in section 161”, substitute “within thirty days from the date on which the balance-sheet and the profit and loss account were so laid”.

10     *Section 303.*—In sub-section (2), for “twenty-eight”, in all places, substitute “thirty”.

*Section 394.*—In sub-section (3), for “fourteen”, substitute “thirty”.

*Section 404.*—In sub-section (3), for “fifteen”, substitute “thirty”.

15     *Section 445.*—In sub-section (1) and in sub-section (1A), for “one month”, substitute “thirty days”.

*Section 481.*—In sub-section (2), for “fourteen”, substitute “thirty”.

*Section 509.*—In sub-section (6), for “twenty-one”, substitute “thirty”.

20     *Section 516.*—In sub-section (1), for “twenty-one”, substitute “thirty”.

*Section 559.*—In sub-section (2), for “twenty-one”, substitute “thirty”.

25     *Section 592.*—In sub-section (1), for “one month”, substitute “thirty days”.

## STATEMENT OF OBJECTS AND REASONS

In pursuance of its terms of reference, the Commission of Inquiry on the administration of Dalmia-Jain Companies made certain recommendations for the amendment of the Companies Act with a view to prevent in future malpractices of the nature observed by it, and also to ensure due and proper administration of the funds and assets of companies in the interest of the investing public. Later, at the instance of Government, a Committee consisting of Shri C. K. Daphtary and Shri A. V. Visvanatha Sastri examined the recommendations of the Commission of Inquiry and made some suggestions of its own for amending the said Act. The Bill, *inter alia*, seeks to implement the recommendations of the Commission of Inquiry and the Daphtary-Sastri Committee.

2. Opportunity is also being taken (i) to strengthen the provisions relating to investigation into the affairs of companies and to provide for more effective audit in dealing with cases of dishonesty and fraud in the corporate sector, and (ii) to simplify some of the procedural requirements which are at present burdensome to the companies without being of corresponding advantage to the Government.

3. The notes on clauses explain the provisions of the Bill.

NEW DELHI;  
The 14th September, 1964.

T. T. KRISHNAMACHARI.

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PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF  
THE CONSTITUTION OF INDIA

[Copy of Letter No. 12/49/63-PR, dated the 14th September, 1964  
from Shri T. T. Krishnamachari, Minister of Finance to the  
Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill further to amend the Companies Act, 1956, recommends to the House the consideration of the Bill under article 117(3) of the Constitution.

*Notes on clauses*

*Clause 2.*—The Companies Act at present extends only to one of the three districts of Nagaland, namely, the District of Tuensang. It is not applicable to the other two districts, namely, Kohima and Mokokchung. On the recommendation of the Government of Nagaland it is proposed to extend the Companies Act to the whole of Nagaland State.

*Clause 3.*—*Sub-clause (i).*—It is proposed to make clear that books and papers which are sometimes interpreted to exclude vouchers should include such documents. This is necessary to ensure that they are maintained along with other books and papers, and are available to Inspectors for purposes of investigation.

*Sub-clause (ii).*—As recommended in paragraph 24 of Part II of the Report of the Commission of Inquiry on the Administration of Dalmia-Jain Companies (hereinafter referred to as the Commission's Report), it is proposed to expand the definition of 'Officer' so as to bring within its ambit any person in accordance with whose instructions the Board or any of the directors of a company is accustomed to act. This is designed to counter the trend whereby dummy directors are appointed on Boards of companies to implement policies of a dubious nature, while masterminds mainly instrumental in evolving these policies remain in the background.

*Clause 4.*—The Act, as it stands, does not provide for delegation of powers by the Company Law Board to the officers of the Board. This creates administrative difficulties and causes unnecessary delays. This clause is intended to provide for such delegation with the approval of Government.

*Clause 5.*—This clause seeks to implement the recommendation of the Daphtary-Sastri Committee based on the observations contained in paragraphs 2 to 5 of the Commission's Report. The purpose of the amendment is to provide for clear definitions of the main and the subsidiary objects of a company in its Memorandum of Association.

*Clause 6.*—This amendment does away with the technical necessity of obtaining Government's approval under section 21 for the mere addition or deletion of the word "Private" from a company's

name, consequent on its conversion from a public into a private company or *vice versa*.

*Clause 7.*—It is proposed to give power to the Central Government to exempt from the provisions of section 43A any private company in which shares are held by one or more bodies corporate, incorporated outside India, if the constitution of the said body corporate or each of the bodies corporate is such that it could be treated as a private company under the Indian Company Law. The amendment is calculated to remove the difficulty said to be experienced by small industries working in collaborating with small foreign companies of the nature of Indian private companies, because of the restrictions applicable to public companies in regard to managerial remuneration, etc.

*Clause 8.*—This clause is based on the recommendation contained in paragraph 11 of the Commission's Report. It seeks to make it an offence to make applications for shares in the name of, or to induce the allotment of shares to, fictitious persons.

*Clause 9.*—This clause is based on the recommendation made by the Vivian Bose Commission and the Daphtary-Sastri Committee. This is intended to safeguard the amounts paid by the applicants for shares until such time as the minimum subscription is collected by the company. The proposed amendment to section 69(4) is on the lines indicated by the Daphtary-Sastri Committee.

*Clause 10.*—This clause seeks to rectify a drafting defect in section 73(5). This sub-section, which defines the circumstances in which the operation of the section would not apply, uses the phrase "permission shall not be deemed to be refused" while the operative part refers to "permission has not been granted". This difference in the expressions used has given rise to a doubt whether a company would be exempted from the operative part of this section in the circumstances mentioned in sub-section (5). The intention of this clause is to clarify the position.

*Clause 11(a).*—The amendment to clause (a) of sub-section (1), which is based on the recommendation of the Daphtary-Sastri Committee, seeks to impose a duty on the promoters and directors of a company to ensure that the share-capital reflects cash or other valuable assets and is not supported by merely book adjustments.

*Clause 11(b).*—The amendment to section 75(3) empowers the Registrar of Companies to grant, in appropriate cases, such extension of time as he thinks fit for filing the return of allotment even



when the application for the extension is made after the expiry of one month specified in sub-sections (1) and (2). Simultaneously, it is also proposed to delete the existing proviso to sub-section (4) which gives power to the Court to grant extension of time when the delay exceeds one month. The amendment is designed to save companies from the expenses involved in applying to a Court, and help them in obtaining extension of time speedily from the Registrars.

*Clause 12.*—This clause is based on the recommendation contained in paragraph 10 of the Commission's Report, and seeks to make it clear that under-writing commission should not be paid except in respect of shares or debentures offered to the public. It also requires that the company should file with the Registrar a copy of the contract for payment of the under-writing commission at the time of the delivery of the prospectus.

*Clause 13.*—The new sub-section (1A) of section 108 seeks to impose restrictions on the period of currency of blank transfers on the lines of the recommendation in paragraph 19 of the Commission's Report. The proposed restrictions are—

(a) that every instrument of transfer shall be in the prescribed form bearing the date of issue stamped by the prescribed authority; and

(b) that the said instrument is required to be delivered to the company within six months from the date of issue in the case of listed shares and within two months from that date in the case of any other shares.

These restrictions are designed to curb the abuse inherent in the system of blank transfer.

*Clause 14.*—Section 10A already provides for the Tribunal to exercise the powers of the Court under section 155 for the rectification of the Share Registers of companies. Since the powers of the Central Government under section 111 of the Act to hear appeals against refusal by companies to register transfer of shares, are of a quasi-judicial nature and somewhat allied to those of the Court under section 155, the powers and functions of the Central Government under section 111 in regard to appeals against refusal to register transfer of shares are, by this amendment, proposed to be conferred on the Tribunal.

*Clause 15.*—This clause is based on the recommendation contained in paragraph 6 of the Commission's Report as endorsed by the Daphthary-Sastri Committee. It seeks to prohibit a company from commencing any business in relation to its objects without obtaining the

prior approval of the share-holders by a special resolution. It also requires a declaration of compliance with the provision of this section being filed with the Registrar.

*Clause 16.*—A doubt has arisen as to how the value of shares and debentures should be calculated for purposes of section 153B(4). The explanation sought to be inserted by this clause makes the position clear.

*Clause 17.*—This clause should be read with clause 42 which seek to amend section 307. These two amendments are based on the recommendations of the Vivian Bose Commission that the beneficial holdings above five per cent. limit should be disclosed so that the name of the real holders of such shares, as distinct from those of the nominees by whom such shares are ostensibly held, are known.

*Clause 18.*—This clause seeks to simplify the procedure contemplated in section 163 under which a company is required *inter alia* to give notice in newspapers of their intention to maintain registers, indexes, returns and copies of certificates and documents at places other than the registered office of the company. It is felt that this requirement entails avoidable expenditure on the companies concerned, and should not be insisted upon. In any case, notice of such intention has to be given to Registrars of Companies. This would suffice.

*Clause 19.*—This clause seeks to remove a practical difficulty in respect of section 43A public companies where there may be less than five members. It is, therefore, proposed to modify section 174 and provide for two members to form a quorum.

*Clause 20.*—By virtue of the definition of the term 'Officer' as proposed to be revised by clause 3(ii) *supra*, the words sought to be omitted from section 203, by this amendment, are redundant.

*Clause 21.*—The object of the amendment of sub-section (1) of section 209 is to ensure that in respect of companies engaged in production, processing, manufacturing or mining activities which may be specified by notification issued by the Central Government, proper records relating to utilisation of material and labour are available which would make the efficiency audit possible.

It is proposed to re-draft sub-section (4) with a view to making it clear that the Registrar of Companies or any officer authorised in that behalf may inspect the books of account and other books and papers of the company without giving any previous notice to the company or any officer thereof, if sufficient cause exists

for such inspection and take copies of and put identification marks on, the documents so inspected. Opportunity is also taken to make it obligatory on the company and its officers to produce the necessary books of account, etc., for inspection by the Registrar or any other officer and to give them all possible assistance in connection therewith. The changes proposed in sub-section (6) are intended to make the officers and other employees and agents of the company and of its managing agents, secretaries and treasurers also responsible for taking reasonable steps to secure compliance with the requirements of section 209.

*Clause 22.*—(a) This clause is based on the recommendation of the Daphtary-Sastri Committee and seeks to provide against the situation revealed in the Commission's Report under which the investing public lost heavily by contributing to the capital of the companies which indulged in dubious practices not open to normal audit.

(b) It is proposed to insert a new sub-section namely, sub-section (4A) in section 227 to enable the Government to issue suitable instructions to auditors. This provision is analogous to section 619 which empowers the Comptroller and Auditor-General to issue similar instructions to the auditors in respect of Government companies.

*Clause 23.*—This amendment is of a drafting nature and is intended to enable Government to delegate the powers of granting exemption under section 228(4) to the officers of the Company Law Board.

*Clause 24.*—A new section is proposed to be introduced as section 233B to enable Government to issue necessary directions for conducting cost audit of companies engaged in manufacture or mining activities.

*Clause 25.*—This clause seeks to give concurrent powers to the Tribunal constituted under section 10A to order search and seizure by the Registrar. These powers are at present enjoyed only by First Class Magistrates (or the Presidency Magistrate).

*Clause 26.*—This clause seeks to provide certain facilities to Inspectors appointed under this Act to investigate various aspects of company matters. The need for such amendment is based on the experience of the difficulties encountered by the Inspectors in carrying out the duties entrusted to them.

*Clause 27.*—This clause seeks to confer on the Tribunal constituted under section 10A concurrent powers to order search and

seizure by Inspectors appointed under the Act. This provision is complementary to that made in clause 25 where similar concurrent powers are sought to be conferred on the Tribunal to order searches and seizures by Registrars of Companies.

*Clause 28.*—The existing section 241 requires that the report of the Inspector should be sent to the company concerned. A doubt has been expressed that the existing provision might be construed to include not only the report in its final form but also such interim reports as the Inspector may choose to furnish. The amendment makes it clear that such interim reports need not be sent to the company.

*Clause 29.*—The proposed amendment is based on the recommendation made by the Daphtary-Sastri Committee in the light of the Commission's Report. One of the methods by which investigation into the affairs of the company was sought to be delayed was by raising technical objections to it on the ground that applications for relief against oppression and mismanagement were pending before a Court or that the company concerned had gone into liquidation. The proposed section 250A provides that investigations may be initiated notwithstanding the voluntary winding up of the company or the pendency of such applications in Court.

*Clause 30.*—This clause is intended to remove a practical difficulty in respect of section 43A public companies where the members need not be more than two. It is, therefore, proposed to modify section 252 and provide that in the case of such companies the minimum number of directors should be two and not three as is the case with other public companies.

*Clause 31.*—The clause is intended to obviate the need for unnecessary references by the companies to the Government or the Company Law Board. Under the existing provision of section 259 any increase in the number of directors beyond the maximum prescribed by the Articles of Association requires the approval of Government. It is now proposed that the approval of Government would not be required for increase in the number of directors up to twelve irrespective of the provisions in the Articles of Association.

*Clause 32.*—Section 264 requires that a person proposed as a candidate for the office of director should file with the company his consent to act as director, if appointed. It also requires that a person other than a director re-appointed after retirement by rotation shall not act as director unless he has filed with the Registrar his consent in writing to act as such. This amendment seeks to exempt persons

who have served as Directors in the immediate preceding term from these requirements. It is felt that in the case of such persons the requirement to file their consent in writing is a formality which could well be dispensed with.

*Clause 33.*—This clause proposes to delete sub-section (4) of section 266 as the information filed under this sub-section is otherwise available with the Registrar.

*Clause 34.*—This clause proposes to delete section 271 altogether. The information about the share qualification of the directors would be available to the Registrar in the annual returns in which the information is included.

*Clause 35.*—This amendment is consequential to deletion of section 271.

*Clause 36.*—The present provision regarding the retiring age of a Director is contained in section 280. Under this section the normal retiring age for a Director is sixty-five, but he could continue beyond this age provided a special resolution is passed by the company. The amendment seeks to raise the age of retirement of a Director to seventy-five but makes no provision for continuance beyond that age by a special resolution or otherwise. The amendment also extends the retiring age to private companies to which it had hitherto not been applicable.

*Clause 37.*—The deletion of section 281, which is proposed by this clause, is consequential to the amendment of section 280.

*Clause 38.*—The proposed amendment of section 282 is also consequential to the amendment of section 280.

*Clause 39.*—The wording of section 285, as it stands, is rather involved and has given rise to certain doubts. It is proposed to make the position clear and provide for a meeting to be held at least once in every three months and at least four times every year.

*Clause 40.*—This clause is based on the observations of the Vivian Bose Commission regarding the abuse arising out of payment of compensation to sole selling agents for the unexpired period of their agreement. The Commission has suggested that in certain circumstances no compensation should be paid at all, while in others compensation should be paid only for the unexpired portion of the agreed term not exceeding three years. This clause seeks to insert a new section to implement these recommendations.

*Clause 41.*—This clause seeks to give relief to the companies to the extent that it would not be required to inform the Registrar of changes of particulars in respect of their Directors, Managing Directors, Managing Agents, Secretaries and Treasurers, Managers or Secretaries except in the annual return.

*Clause 42.*—Sub-section (11) of section 307 is sought to be substituted by a new sub-section, which, in addition to the existing provision, will require notification of beneficial holders of more than five per cent. of the equity share capital. This proposed amendment is in implementation of the recommendations made by the Commission.

*Clause 43.*—(i) The restriction on remuneration of Directors is sometimes sought to be evaded by the Directors holding technical or other appointments in addition to their Directorships. This clause seeks to provide for such cases being brought within the purview of this section.

(ii) There is no provision at present for payment of monthly salaries to part-time Directors. In response to the suggestion made by the Chamber of Commerce it is proposed that a provision should be made for such payment in appropriate cases.

*Clause 44.*—This clause seeks to relax the requirements of the existing section 310 to allow companies without reference to the Central Government to increase the fees of the Directors for attending meetings of the Board or of Committees thereof up to rupees one hundred for each such meeting.

*Clause 45.*—In response to the suggestions received from the Chambers of Commerce it is proposed in this clause to relax the requirements regarding previous consent of the company in regard to the appointment of a Director or a partner or a relative of such a Director, etc., to hold an office or a place of profit in the company. In place of such previous consent it is now being provided that a special resolution should be obtained at the first general meeting held after such an appointment is made.

*Clause 46.*—The Vivian Bose Commission suggested that inter-company loans should rank at par with inter-company investments



and should be subject to the same restrictions as the latter. In particular, the Commission recommended that the loans referred to in section 370 should be subject to the restrictions contained in section 372. This clause seeks to amend section 370 accordingly.

*Clause 47.*—Some of the Chambers have represented that the requirements of section 372 (5) that no investment shall be made by a company unless it is sanctioned by a resolution passed at a meeting of the Board of Directors with the consent of all the Directors present at the meeting should not apply to investment companies. This clause seeks to implement this recommendation.

*Clause 48.*—Arising out of the findings of the Vivian Bose Commission, the Daphtary-Sastri Committee has recommended that provision should be made for the disclosure of all material facts to a Court such as the financial position, the latest audit report, the pendency of investigation proceedings, etc., before a court accepts a proposal of compromise at the instance of the liquidator. This clause seeks to implement this recommendation.

*Clause 49.*—This clause is also based on the same findings of the Vivian Bose Commission as the clause above that an opportunity should be given to the Company Law Board or the Registrar to report to the Court about the affairs of the company.

*Clause 50.*—Based on the recommendation in paragraph 46 of the Commission's Report, the proposed section 394A makes it obligatory on the Court to give notice to the Central Government of every application made to it under section 391 or 394 and to take into consideration the representations made by that Government, before passing any order on the proposed compromise or arrangement or scheme of amalgamation. This would enable the Government to study the proposal and raise such objections thereto as it thinks fit in the light of the facts and information available with it, and also place the Court in possession of certain facts which might not have been disclosed by those who appear before it so that the interests of the investing public at large may be fully taken into account by the Court before passing its order.

*Clause 51.*—Paragraphs 37 to 43 of the Commission's Report have dealt with the need for checking the malpractices in relation to the 'Take-over' offers and acquisition of shares of dissenting shareholders under a scheme or contract approved by the majority. With a view to preventing such malpractices it is considered necessary to take effective measures, on the lines suggested in the said Report, to en-

sure that adequate information is disclosed in a take-over offer to the share-holders so that they could be allowed to judge for themselves whether or not to accept the offer. For this purpose it is proposed to amend section 395 to provide that any such offer or any circular, etc., containing such offer shall be accompanied by such information as may be prescribed by the Central Government and shall contain a statement disclosing the steps taken by or on behalf of the company making the offer, disclosing the steps it has taken to ensure that necessary cash will be available for payment of consideration for the shares to be acquired. It is also provided that no such circular, etc., should be issued until a copy thereof is presented to and registered by the Registrar. The Registrar will also have the power to refuse to register any such circular if it does not contain all the requisite information or if it sets out any information in such a way as to give a false impression. As a further safeguard to the dissenting share-holders, the proposed amendment imposes an obligation on the transferor company to intimate to them the fact of registration of the transferee company as the holder of the shares under transfer and also of the receipt of the amount or other consideration representing the price payable to them by the transferee company.

*Clause 52.*—This amendment is based on the finding of the Vivian Bose Commission and the recommendations of the Daphtary-Sastri Committee. It is intended to prevent the practice of destroying incriminating accounts and records of the company which has been amalgamated with another company. This clause seeks to provide that permission of Government should be obtained before such records are destroyed.

*Clause 53.*—This clause proposes to delete sections 410 to 415 in regard to the Advisory Commission and seeks to enact a single clause in lieu thereof constituting an Advisory Committee.

*Clauses 54 and 55.*—On the basis of the findings of the Vivian Bose Commission and the recommendation made by the Daphtary-Sastri Committee, it is proposed to amend sections 497 and 509 to provide that a company which has been brought under voluntary liquidation should not be dissolved until the official liquidator has scrutinised the books and papers of the company and made a report to the court that its affairs have not been conducted in a manner prejudicial to the interests of its members or the public interest.

*Clause 56.*—A new section 511A is proposed to be inserted in order to ensure that the liquidator in case of voluntary winding up will have adequate information about the affairs of the company on the lines specified in section 454 in regard to compulsory winding up by court.



*Clause 57.*—This clause seeks to exempt foreign companies from the requirement to inform the Registrar of changes of particulars of their Directors and Secretaries. Such information is not really essential from the point of view of Government and may cause unnecessary harassment to the company concerned.

*Clause 58.*—(i) This clause seeks to elaborate section 635A and indemnify—

(a) persons acting in good faith in pursuance of the Act who may not be Government officer; and

(b) in respect of publication by or under the authority of Government or such officers of any such report, paper or proceeding.

(ii) A new section 635A is proposed to be inserted so that Government or any person acting in this behalf is not compelled to disclose the sources of information received by it or him. It is intended to ensure that the flow of information is not impeded by the identity of the sources being revealed.

*Clause 59.*—This clause seeks to empower Government to condone delays in the matter of complying with certain provisions of the Act. This would help companies in cases of genuine hardship.

*Clause 60.*—A new section 640B is proposed to be inserted on the lines of the existing section 412, which is proposed to be deleted along with other sections regarding the Advisory Commission.

*Clause 61.*—The existing Schedule IA of the Act provides for a list of relatives in 49 items. This list is proposed to be reduced by deleting items 23 to 49 (both inclusive).

*Clause 62.*—A Schedule has been added to the Bill to provide for minor amendments or amendments of a clarificatory or consequential nature. The majority of these amendments relate to one item, namely, the provision of a uniform time limit of thirty days for the filing of various documents by the company before the Registrar. This uniform time limit is intended to help the companies in complying with the provisions of the Act.

## FINANCIAL MEMORANDUM

In para 19 of its Report, the Commission of Inquiry on the administration of Dalmia-Jain Companies has recommended the imposition of restrictions on the period of currency of blank transfers so as to curb the abuse inherent in the system of blank transfers. Clause 13 of the Bill seeks to implement this recommendation by inserting a new sub-section in section 108 of the Companies Act to provide that (a) every instrument of transfer shall be in the prescribed form obtainable from, and bearing the date of issue stamped by the prescribed authority and (b) the said instrument shall be delivered to the company within 6 months from the date of issue in the case of listed shares and within two months from that date in the case of any other shares.

2. For the present Government propose to designate the various Stock Exchanges and Registrars of Companies under the Company Law Board as the prescribed authority for the above purpose. Only expenditure that can be anticipated in this behalf will be on account of printing of the prescribed forms and remuneration payable to the clerical staff engaged by the Stock Exchanges for assisting them in performing the functions of the prescribed authority and other incidental expenses. As far as can be anticipated at present, the expenditure involved is not likely to exceed Rs. 40,000 per annum as indicated below—

Staff consisting of 10 Lower Divn. Clerks	Rs. 24,000
Cost of printing transfer forms, including cost of paper.	Rs. 3,000
Incidental expenses including stationery, furniture etc.	Rs. 13,000
TOTAL	Rs. 40,000

3. The provisions in clause 53 of the Bill for the constitution of an Advisory Committee, in place of the Advisory Commission which has been set up by the Central Government under the existing section 410 of the Companies Act, will involve expenditure on account of travelling and daily allowance payable to the Members of the Committee when they come to Delhi or any other place to attend meetings. No salary or honorarium will, however, be paid to the

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members of the Advisory Committee. Recurring expenditure, as far as can be anticipated on account of travelling and daily allowance, is estimated at about Rs. 30,000 per annum as against total annual expenditure of about Rs. 58,000 on the Advisory Commission. The expenditure on the Advisory Committee would, therefore, be much less than that incurred on the Advisory Commission and the provision in clause 53 of the Bill will not thus involve any fresh expenditure from the Consolidated Fund of India.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 13, 15, 21, 23, 24, 51 and 60 of the Bill contain *inter alia* provisions authorising the Central Government to prescribe the following:—

(a) the form in which the instrument of transfer in respect of shares is to be drawn up and the authority from whom such form would be obtainable (clause 13);

(b) the form in which the declaration that the company has approved of the commencement of any business in relation to the objects specified in clause (c) or clause (d) of sub-section (1) of section 13 is to be filed [clause 15(a)];

(c) the particulars relating to utilisation of material or labour to be included in the books of account kept by a company engaged in production, processing, manufacturing or mining activities [clause 21(a)];

(d) qualifications which a person must possess for conducting the audit of cost accounts of companies and the form in which the report of such audit shall be made (clause 24);

(e) the information that must accompany (i) every offer of a scheme or contract involving the transfer of shares of one company to another or (ii) every circular containing such offer or (iii) every recommendation to the members of the transferor company by its directors to accept such offer (clause 51);

(f) forms in which applications under sections 259, 268, 269, 310, 311, 326, 328, 329, 332, 343, 345, 346; 352, 408 and 409 shall be made (clause 60).

The above are matters of administrative detail and it is scarcely possible to provide for them in the Act itself. The rule-making powers contemplated in the aforesaid clauses are of a normal character.

S. L. SHAKDHER,  
Secretary.